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UNCLAS SECTION 01 OF 03 MONROVIA 000242

SIPDIS

DEPARTMENT FOR AF/W-PDAVIS, INR/AA-BGRAVES, AF/EPS, EB
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SUBJECT: LIBERIA: GOVERNMENT RATIFIES AMENDED FIRESTONE CONCESSION

1. (U) SUMMARY: The Liberian Legislature ratified March 27 the Amended and Restated Concession Agreement signed by the Government of Liberia (GOL) and Firestone Liberia on February 22. The new Agreement concludes extended negotiations between the GOL and Firestone to modify a concession extension the National Transitional Government of Liberia (NTGL) awarded the firm in 2005. Under the new agreement, which runs through 2041, Firestone commits to continue replanting, complete a rubber-wood factory, increase its support to small Liberian rubber farmers and undertake additional social and educational projects. It also increases Firestone's income tax rate from 25% to 30% and establishes new transfer pricing provisions based on international indices. The GOL estimates the new agreement will result in a retroactive increase in revenues for 2007-08 of nearly \$2.5 million.

2. (U) SUMMARY CONTINUED: The amended Firestone agreement, like the revised contract with ArcelorMittal in 2007, illustrates the GOL's determination to negotiate and conclude detailed and transparent concession agreements with current and potential investors that maximize government revenue and promote social investments. Although the renegotiation of valid concession agreements runs the risk of establishing a precedent that future governments might exploit for private gain, and while the negotiations themselves were often protracted and vulnerable to rent-seeking, the agreements are more in line with international best practice and a break from the opaque and often imprudent concessions of the past. END SUMMARY.

3. (U) Firestone negotiated its original 99-year concession with the Liberian government in 1926. In 2005, Firestone concluded an extension with the NTGL that granted the company an additional 86-year term up to 2091. The Contract and Concession Review Committee established in 2006 under the Governance and Economic Management Assistance Program (GEMAP) proposed that the government renegotiate the NTGL agreement to remedy questionable provisions. The amended and restated agreement of 2008 is valid for 36 years (from 2005), until 2041. Additional changes from the 2005 concession agreement include:

Grant of Rights

-- Firestone Liberia acknowledges Government ownership of all rubber trees and other non-moveable assets in its production area at termination of the agreement;

-- Parent company Bridgestone Firestone Diversified Products, LLC pledges that Firestone Liberia will remain a wholly-owned subsidiary and the fixed assets of Firestone Liberia will not be transferred without Government consent;

-- Firestone Liberia will maintain a debt to equity ratio of 2:1

(vice 4:1);

-- Firestone and Government will prepare a binding map to confirm the total concession area of 118,900 acres.

Conduct of Operations

-- Export sales prices for transactions between Firestone Liberia and an affiliate shall be determined by reference to available international reference prices or indices rather than on a price negotiated and set internally by Firestone and reviewed by Government;

-- The purchase price for rubber offered to private Liberian rubber farmers will be based on an international index rather than set by Firestone;

-- Firestone Liberia commits to replant at least 50,000 acres (up from 5,000) between 2005 to 2017 and to maintain 65,000 planted acres during the term of the concession;

-- Firestone will give (an unspecified) preference to goods produced in Liberia by Liberian citizens when purchasing goods and services related to its activities;

-- Firestone commits to invest \$10 million in a rubber wood facility to start operations in 2008, employing at least 500 people (Note: the factory is already near completion);

-- Firestone will provide 700,000 (vice 600,000) rubber saplings per year and sell farm supplies at cost to qualified Liberian rubber farmers.

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Public Health, Safety and Environment

-- Firestone shall develop a security plan that will be approved by Government to ensure the Plant Protection Department adheres to the rule of law and international human rights principles;

-- Firestone commits to construct 2,300 new houses by 2010, provide one house per entitled employee by 2015, and ensure each household has a sanitary latrine or bathroom by 2011;

-- Specific reference now obligates Firestone to adhere to Liberian environmental laws, including the Environmental Protection Management Law.

Education, Employment and Training

-- Firestone shall provide education through high school (vice ninth grade) for all eligible dependents, donate \$165,000 in financial assistance per year for three years to the Harbel Multilateral High School, and contribute \$35,000 annually through 2015 to a Government-administered adult education program.

-- All unskilled positions are now limited to Liberian citizens, and 50% of the ten senior management jobs must be held by Liberians within 10 years;

-- Firestone shall provide \$50,000 annually to the University of Liberia's College of Agriculture, as well as \$115,000 annually through 2015 and \$150,000 annually thereafter in scholarships for Liberian citizens, a quarter of which will be reserved for Margibi county students;

-- Firestone will support the Government's efforts to create a Rubber Development Fund financed by rubber export fees, to support the rehabilitation of the rubber sector through extension programs

and services to Liberian farmers;

Taxation and other Government Payments

-- Firestone to be taxed on its net taxable income at a rate of 30% (vice 25%), computed in accordance with Liberian law (rather than the specific terms of the 2005 Agreement) applied retroactively to 2007 income provided the agreement is ratified by the Legislature and signed into law by the President by March 30, 2008;

-- Firestone no longer exempt from certain import duties and must pay taxes on fuel, rice and other goods, albeit with a 50% reduction on fuel duties and a ceiling of \$1.10 per bag for rice during the rehabilitation period (through 2015);

-- Firestone no longer exempt from certain taxes - now subject to ECOWAS Trade Levy (1% on goods imported from non-ECOWAS states), withholding taxes, real property taxes, and goods and services tax, with a ceiling on the latter of 3.5% and an exemption on capital goods;

-- Firestone's quarterly turnover tax rate increases from 1% to 2% of gross income;

-- Annual rental fee for government land in the concession area of \$2.00 (vice 50 cents) per acre, adjusted for inflation every five years;

-- Firestone no longer enjoys free access to broadcast and communications frequencies and instead must pay prevailing rates;

-- Firestone no longer enjoys privileged use of airports, seaports and other similar facilities owned by the Government and instead must pay applicable rates, including inspection fees at prevailing rates.

14. (U) The revised agreement was signed on February 22 by Firestone and an inter-ministerial negotiation team. Minister of Agriculture Dr. J. Christopher Toe, who led the negotiations on behalf of the GOL, referred to the renegotiation of the Firestone concession as "an embodiment of Government's goals to ensure that all existing agreements equitably protect Liberian interests and are consistent with principles that attract and sustain foreign investment in Liberia." Dan Admontis, President of Firestone Natural Rubber

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Company, emphasized that "the new agreement provides the right framework for Firestone Liberia" to rebuild operations and facilities in Liberia while supporting Liberia's recovery efforts.

15. (SBU) The proposed agreement then passed to the Legislature where there were initial indications that some legislators might seek to delay ratification. A Joint House Committee on Judiciary, Agriculture and Concessions sought to raise the land rental fee and to earmark such fees for the development of Montserrado and Margibi counties, where Firestone is located. Representative Saah Gbollie told PolCouns March 20 that he was seeking more local control over tax revenues and scholarships. In the end, the legislators were reminded that the government stood to receive \$2.5m in retroactive tax revenues from Firestone if the agreement was passed before March 30. The Senate passed the restated concession on March 20 and the House did the same on March 27. The agreement was returned to the President in time for her signature before March 30.

16. (SBU) COMMENT: Like the 2007 agreement with Mittal Steel, conclusion of the Firestone agreement marks a break from the past and sets a benchmark for future concession agreements. While agreements concluded with the NTGL often granted significant tax privileges with few investment or performance benchmarks, President Johnson Sirleaf's administration has demonstrated a determination to negotiate and conclude detailed and transparent concession agreements with current and potential investors that maximize government revenue and benefits for Liberians even if achieving such an outcome requires protracted negotiations that delay urgently

needed investment and job creation. Thus far, the GOL has limited the renegotiation of concessions to those concluded during the NTGL or found to be improper by the Contract and Concessions Review Committee in 2006, but there are fears that the GOL intends to re-examine other concessions, establishing a contract revision precedent that future governments might repeat for private gain, and future investors might find off-putting. In addition, although the process has been largely transparent, in the absence of standardized investment incentives and approval procedures, these long negotiations (or re-negotiations) involving multiple interests provide opportunities for rent-seeking. The GOL walks a fine line between breaking with "business as usual" while still remaining "open for business." END COMMENT.

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